



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Lewis Brisbois Trademark Suit Moving Forward In Texas Court

By **Catherine Marfin**

Law360 (December 2, 2022, 8:07 PM EST) -- Lewis Brisbois Bisgaard & Smith LLP's trademark infringement suit against three Texans will proceed in court after a hearing Friday in which U.S. District Judge Keith P. Ellison said it was "hard to believe" that one of the attorneys filed cases using the firm's name "with a clear conscience and clear heart."

Judge Ellison expressed disappointment the parties could not reach an agreement outside the courtroom but said at the end of the nearly hour-and-a-half telephone hearing that "it was clear" an agreement wouldn't be reached.

"There seems to be so little separating you," Judge Ellison said. "We need to get to some kind of consensus that it won't happen again."

Judge Ellison did not rule on Lewis Brisbois' motion for a preliminary injunction but set a March 15 deadline for the firm to submit its motion for summary judgment.

Tensions ran high during Friday's hearing, with attorneys for Lewis Brisbois and defendant Michael Joseph Bitgood repeatedly attacking the other side's characterization of various arguments, prompting Judge Ellison to ask the parties to "stick to the facts" multiple times.

Bitgood, who also goes by Michael Easton and is **accused of using the Lewis Brisbois name** for his mediation company, said he would give the firm "everything they want" if the case went to mediation and was willing to agree to a preliminary injunction.

"What I do resent is being bullied, and that's what's happening here," Bitgood, who is not a licensed attorney, said.

The other defendants present at the hearing — attorneys Susan C. Norman and Bradley B. Beers — said they were not willing to agree to a preliminary injunction, claiming attorney immunity shielded them from the suit. An attorney for Richard P. Jones was not present.

The trademark battle can be traced back to January, when Bitgood and Jones sued residential development company Imperial Lofts LLC in state court in Fort Bend County over allegedly improperly charged rental fees. Imperial Lofts hired David Oubre, the managing partner of Lewis Brisbois' Houston office, to represent it.

In May, Bitgood and Norman, Jones' lawyer, filed an assumed name certificate in Fort Bend County for a business named Lewis Brisbois Bisgaard & Smith. Bitgood also filed a registration for a domestic limited liability partnership with the Office of the Secretary of State of Texas using the same name later that month.

Beers, acting as an attorney for Bitgood's mediation company, went on to file an assumed name certificate with the secretary of state's office in June, again using the same name.

Shortly after Beers registered the certificate, Bitgood and Jones filed an amended suit against Imperial Lofts, adding the registered entity as a plaintiff and Oubre as a defendant.

Bitgood and Jones described Oubre as an "imposter" and said the real Lewis Brisbois **had lost its**

EXHIBIT 60

**right to do business in Texas** under the name because its filing had expired without being renewed.

Bitgood previously told Law360 that he "bought" the Lewis Brisbois name for \$750 when it became available because he was upset about Oubre's behavior during settlement negotiations.

During Friday's hearing, Bitgood said he has dissolved his company and has "done nothing except stand down" since, but added that Lewis Brisbois should have raised objections to his use of their name sooner.

He pointed to a letter he sent to Lewis Brisbois in California earlier which used their name on the letterhead. He said the firm didn't object or comment on the fact that the letterhead used its name.

"I don't think that's what they meant to say," Judge Ellison said, referring to it being OK for Bitgood and the related defendants to use the Lewis Brisbois name.

William Scott Helfand, an attorney representing Lewis Brisbois, said the firm either wanted to institute the status quo that existed before the infringement but would continue to pursue the case if the parties couldn't agree to that.

During discussions of Norman and Beers' attorney immunity argument, Beer's attorney Samuel Wallace Dunwoody said the type of conduct — filing paperwork while working as an attorney — should protect his client from the lawsuit.

But Judge Ellison said filing papers on behalf of another firm "strikes me as something he knew was wrong."

Bitgood, Norman and Beers have each filed various motions to dismiss the suit, which Judge Ellison has yet to rule on.

Bitgood told Law360 he was "hanging his hat" on his motion to dismiss the suit under the Texas Citizens Participation Act.

"I really don't want to say I know what a judge is going to do, but if he follows my motion to dismiss ... if he reads it carefully, he'll grant it," Bitgood said. "That's going to put an end to this."

Counsel for Lewis Brisbois and Beers did not immediately return a request for comment Friday.

Norman declined to comment.

Lewis Brisbois Bisgaard & Smith LLP is represented by its own William Scott Helfand, Bennett Greg Fisher and Sean Benjamin Braun.

Bitgood and Norman are representing themselves pro se.

Beers is represented by S. Wallace Dunwoody of Munck Wilson Mandala LLP.

Counsel information for Jones was not immediately available Friday.

The Imperial Lofts case is Richard Jones et al. v. Emily Martinez et al., case number 22-ccv-070378, in the County Court of Fort Bend County, Texas.

The case is Lewis Brisbois Bisgaard & Smith LLP v. Michael Joseph Bitgood aka "Michael Easton" et al., case number 4:22-cv-3279, in the U.S. District Court for the Southern District of Texas, Houston Division.

--Editing by Jay Jackson Jr.